

MT LEGISLATIVE HISTORY

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Chapter 277 1991

Bill H _____ S 240

Original bill & hist. ☒ C

H. Committee on Fish & Game

S. Committee on Fish & Game

Hearing Date(s) Mar 13 ☒ C

Hearing Date(s) Feb 12 ☒ C

_____ C

Feb 14 ☒ C

_____ C

_____ C

_____ C

_____ C

Date Out Mar 14 ☒ C

Feb 15 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1 **SENATE** BILL NO. 240
2 INTRODUCED BY Van Halbeek JA
3 BY REQUEST OF THE DEPARTMENT
4 OF FISH, WILDLIFE, AND PARKS
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 LAW REGARDING FISH AND GAME MISDEMEANOR PENALTIES; AMENDING
8 SECTIONS 45-1-205, 87-1-102, 87-2-106, 87-3-102, 87-3-103,
9 87-3-104, AND 87-3-111, MCA; AND PROVIDING AN EFFECTIVE
10 DATE."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 **Section 1.** Section 45-1-205, MCA, is amended to read:
14 "45-1-205. General time limitations. (1) (a) A
15 prosecution for deliberate, mitigated, or negligent homicide
16 may be commenced at any time.
17 (b) A prosecution under 45-5-502 through 45-5-505,
18 45-5-507, or 45-5-625 may be commenced within 5 years after
19 the victim reaches the age of 18 if the victim was less than
20 18 years old at the time the offense occurred.
21 (2) Except as otherwise provided by law, prosecutions
22 for other offenses are subject to the following periods of
23 limitation:
24 (a) A prosecution for a felony must be commenced within
25 5 years after it is committed.

1 (b) A prosecution for a misdemeanor must be commenced
2 within 1 year after it is committed.
3 (3) The period prescribed in subsection (2) is extended
4 in a prosecution for theft involving a breach of fiduciary
5 obligation to an aggrieved person as follows:
6 (a) if the aggrieved person is a minor or incompetent,
7 during the minority or incompetency or within 1 year after
8 the termination thereof;
9 (b) in any other instance, within 1 year after the
10 discovery of the offense by the aggrieved person or by a
11 person who has legal capacity to represent an aggrieved
12 person or has a legal duty to report the offense and is not
13 himself a party to the offense or, in the absence of such
14 discovery, within 1 year after the prosecuting officer
15 becomes aware of the offense.
16 (4) The period prescribed in subsection (2) shall be
17 extended in a prosecution for unlawful use of a computer,
18 and prosecution shall be brought within 1 year after the
19 discovery of the offense by the aggrieved person or by a
20 person who has legal capacity to represent an aggrieved
21 person or has a legal duty to report the offense and is not
22 himself a party to the offense or, in the absence of such
23 discovery, within 1 year after the prosecuting officer
24 becomes aware of the offense.
25 (5) The period prescribed in subsection (2) is extended

1 in a prosecution for misdemeanor fish and wildlife
 2 violations under Title 87, and prosecution must be brought
 3 within 3 years after an offense is committed.

4 {5}{6} An offense is committed either when every
 5 element occurs or, when the offense is based upon a
 6 continuing course of conduct, at the time when the course of
 7 conduct is terminated. Time starts to run on the day after
 8 the offense is committed.

9 {6}{7} A prosecution is commenced either when an
 10 indictment is found or an information or complaint is
 11 filed."

12 **Section 2.** Section 87-1-102, MCA, is amended to read:

13 "87-1-102. Penalties. (1) A person violating who
 14 purposely or knowingly violates any provision of this title,
 15 any other state law pertaining to fish and game, or the
 16 orders or rules of the commission or department is, ~~unless a~~
 17 ~~different--punishment--is--expressly--provided--by--law--for--the~~
 18 ~~violation;~~ guilty of a misdemeanor, except if a felony is
 19 expressly provided by law, and shall be fined not less than
 20 \$50 or more than \$500, imprisoned in the county jail for not
 21 more than 6 months, or both, unless a different punishment
 22 is expressly provided by law for the violation. In addition,
 23 the person, upon conviction or forfeiture of bond or bail,
 24 shall be subject to forfeiture of his license and privilege
 25 to hunt, fish, or trap within this state for a period of not

1 less than 24 months from the date of conviction or
 2 forfeiture.

3 (2) (a) A person convicted of unlawfully taking,
 4 killing, possessing, transporting, or wasting of a bighorn
 5 sheep, moose, wild bison, caribou, mountain goat, or grizzly
 6 bear or any part of these animals shall be fined not less
 7 than \$500 or more than \$1,000, imprisoned in the county jail
 8 for not more than 6 months, or both. In addition, that
 9 person, upon conviction or forfeiture of bond or bail, shall
 10 forfeit any current hunting, fishing, or trapping license
 11 issued by this state and the privilege to hunt, fish, or
 12 trap in this state for not less than 30 months from the date
 13 of conviction or forfeiture.

14 (b) A person convicted of unlawfully taking, killing,
 15 possessing, or transporting a deer, antelope, elk, mountain
 16 lion, or black bear or any part of these animals or wasting
 17 a deer, antelope, or elk shall be fined not less than \$300
 18 or more than \$1,000, imprisoned in the county jail for not
 19 more than 6 months, or both. In addition, that person, upon
 20 conviction or forfeiture of bond or bail, shall forfeit any
 21 current hunting, fishing, or trapping license issued by this
 22 state and the privilege to hunt, fish, or trap in this state
 23 for not less than 24 months from the date of conviction or
 24 forfeiture.

25 (c) A person convicted of unlawfully attempting to

1 trap, take, shoot, or kill a game animal shall be fined not
2 less than \$200 or more than \$600, imprisoned in the county
3 jail for not more than 60 days, or both.

4 (d) A person convicted of unlawfully taking, killing,
5 possessing, transporting, shipping, labeling, packaging, or
6 wasting or unlawfully attempting to take, kill, or possess
7 any game bird, wild turkey, or fish or any part of any such
8 bird or fish or of failure to tag a game animal or game bird
9 as prescribed by law shall be fined not less than \$50 or
10 more than \$200 or imprisoned in the county jail for not more
11 than 30 days, or both.

12 (e) A person convicted of purposely or knowingly
13 taking, killing, possessing, transporting, shipping,
14 labeling, or packaging a fur-bearing animal or pelt of a
15 fur-bearing animal in violation of any provision of this
16 title shall be fined not less than \$50 or more than \$1,000
17 or imprisoned in the county jail for not more than 6 months,
18 or both. In addition, that person, upon conviction or
19 forfeiture of bond or bail, shall forfeit any current
20 license and the privilege to hunt, fish, or trap for not
21 less than 24 months from the date of conviction or
22 forfeiture, and any pelts possessed unlawfully must be
23 confiscated.

24 (f) A person convicted of hunting, fishing, or trapping
25 while his license is forfeited or his privilege denied shall

1 be imprisoned in the county jail for not less than 5 days or
2 more than 6 months. In addition, that person may be fined
3 not less than \$500 or more than \$1,000.

4 (3) A person convicted or who has forfeited bond or
5 bail under this section and whose license privileges are
6 forfeited may not purchase, acquire, obtain, possess, or
7 apply for a hunting, fishing, or trapping license or permit
8 during the period when license privileges have been
9 forfeited. A person convicted of unlawfully purchasing,
10 acquiring, obtaining, possessing, or applying for a hunting,
11 fishing, or trapping license during the period when license
12 privileges have been forfeited shall be fined not less than
13 \$500 or more than \$1,000 or imprisoned in the county jail
14 for not more than 60 days, or both.

15 (3)(4) A person convicted or who has forfeited bond or
16 bail under subsection (2) and who has been ordered to pay
17 restitution under the provisions of 87-1-111 may not apply
18 for any special license under Title 87, chapter 2, part 7,
19 or enter any drawing for a special license or permit for a
20 period of 5 years following the date of conviction or
21 restoration of license privileges, whichever is later. A
22 person convicted of unlawfully applying for any special
23 license under Title 87, chapter 2, part 7, or unlawfully
24 entering a drawing for a special license or permit shall be
25 fined not less than \$500 or more than \$1,000 or imprisoned

1 in the county jail for not more than 60 days, or both.

2 ~~††~~(5) Notwithstanding the provision of subsection (1),
3 the penalties provided by this section shall be in addition
4 to any penalties provided in Title 37, chapter 47, and Title
5 87, chapter 4, part 2."

6 NEW SECTION. Section 3. Suspension of privileges for
7 failure to comply with citation or sentence. (1) A person
8 who fails to comply with the terms of a court citation or
9 fails to fulfill the obligations of any court-imposed
10 sentence for a wildlife violation under this title,
11 resulting in the issuance of a warrant for his arrest, shall
12 surrender any current hunting, fishing, and trapping
13 licenses to the department, and his privileges to hunt,
14 fish, and trap and to hold a valid license to hunt, fish, or
15 trap are suspended until the terms of the court citation or
16 sentence are satisfied.

17 (2) A person who loses his privileges under this
18 section must be notified by the department in person or by
19 mail. A person who hunts, fishes, traps, purchases licenses,
20 or refuses to surrender any current hunting, fishing, or
21 trapping license in violation of this section is guilty of a
22 misdemeanor and subject to the penalties prescribed in
23 87-1-102.

24 **Section 4.** Section 87-2-106, MCA, is amended to read:

25 "87-2-106. Application for license. (1) A license may

1 be procured from the director, any warden, or any authorized
2 agent of the director. The applicant shall state his name,
3 age, occupation, place of residence, post-office address,
4 the length of time in the state of Montana, whether a
5 citizen of the United States or an alien, and such other
6 facts, data, or descriptions as may be required by the
7 department. Except as provided in subsections (2) through
8 (4), the statements made by the applicant shall be
9 subscribed to before the officer or agent issuing the
10 license.

11 (2) Except as provided in subsection (3), department
12 employees or officers may issue licenses by mail. Statements
13 on an application for a license to be issued by mail need
14 not be subscribed to before the employee or officer.

15 (3) To apply for a license under the provisions of
16 87-2-102(4), the applicant must apply to the director and
17 must submit at the time of application a notarized affidavit
18 that attests to fulfillment of the requirements of
19 87-2-102(4). The director shall process the application in
20 an expedient manner.

21 (4) A resident may apply for and purchase a wildlife
22 conservation license, hunting license, or fishing license
23 for his spouse, parent, child, brother, or sister who is
24 otherwise qualified to obtain such license.

25 (5) A license is void unless subscribed to by the

licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on any application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. Any person violating any provision of this statute is guilty of a misdemeanor.

~~{7}--The department may bring an action to prosecute a violation of this section within 3 years of the date of application for licensure--"~~

Section 5. Section 87-3-102, MCA, is amended to read:

"87-3-102. Waste of fish or game. (1) A person who is responsible for the death of a black or brown bear or a mountain lion commits the offense of waste of game if he abandons the head or hide in the field.

(2) A person who is responsible for the death of a grizzly bear commits the offense of waste of game if he abandons the head or hide or any parts required by department or commission regulation for scientific purposes. All parts of a grizzly bear required by department or commission regulation for scientific purposes must be delivered to an officer or employee of the department for inspection as soon as possible after removal, and the department shall return to the licensee any bone structure

and skull within 1 year upon written request. The hide must be returned immediately.

~~(3) It shall be unlawful and a misdemeanor for any A~~
 person responsible for the death of any game animal ~~of this~~
 state, ~~excepting except~~ grizzly, black, and brown bear and
 mountain lion, commits the offense of waste of game if he:

(a) to--detach--or--remove detaches or removes from the
 carcass only the head, hide, antlers, tusks, or teeth or any
 or all of aforesaid parts; or

(b) to-waste wastes any part of any game animal, game
 bird, or game fish suitable for food by transporting,
hanging, or storing the carcass in a manner that renders it
unfit for human consumption; or

(c) to-abandon abandons in the field the carcass of any
 game animal ~~in--the-field; except black and brown bear and~~
~~mountain lion; which need have removed and taken from the~~
~~carcass--only--the head or the hide of such bear or mountain~~
~~lion; and except grizzly bear; which need have removed and~~
~~taken from the carcass only the head and hide and such other~~
~~parts--as the department may demand for scientific purposes.~~
~~All parts of grizzly bear demanded by the department for~~
~~scientific purposes must be delivered to an officer or~~
~~employee of the department for inspection as soon as~~
~~possible after removal, and the department shall return to~~
~~the licensee any bone structure and skull within 1 year upon~~

~~written--request--The hide shall be returned immediately, or~~
~~any portion of the carcass suitable for food.~~

(4) A person in possession of a game animal or game animal parts, game bird, or game fish suitable for food commits the offense of waste of game if he:

(a) purposely or knowingly transports, stores, or hangs the animal, bird, or fish in a manner that renders it unfit for human consumption; or

(b) disposes of or abandons any portion of a game animal, game bird, or game fish that is suitable for food.

(5) A person convicted of waste of game shall be fined not less than \$50 or more than \$1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 6. Section 87-3-103, MCA, is amended to read:

"87-3-103. Limit on number of game animals hunted or killed. It shall be unlawful and a misdemeanor for any person to attempt to kill, take, shoot, or capture or to kill, take, hunt, shoot, or capture more than one game animal of any one species in any one license year unless the killing of more than one game animal of such species has been authorized by regulations of the department."

Section 7. Section 87-3-104, MCA, is amended to read:

"87-3-104. Unlawful to hunt or fish during closed season. It ~~shall--be~~ is unlawful and a misdemeanor for any person during the closed season on any species of game

animal, game bird, or fish to attempt to take, shoot, kill, or capture or to take, hunt, shoot, kill, or capture any such game animal or such game bird or to fish for or catch any such fish."

Section 8. Section 87-3-111, MCA, is amended to read:

"87-3-111. (Temporary) Unlawful to buy, sell, possess, or transport fish or game -- exceptions -- penalties. (1) It is unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110; or

(c) the possession, transportation, sale, or purchase of naturally shed antlers; or

1 ~~te~~(d) the donation and sale of paddlefish roe as
2 caviar under the provisions of 87-4-601.

3 (3) Except as provided in subsection (4), any person
4 violating any of the provisions of this section is guilty of
5 a misdemeanor and upon conviction shall be punished as
6 provided by law.

7 (4) Any person engaging in the activities prohibited in
8 subsection (1) in furtherance of a scheme to traffic in the
9 body parts of unlawfully taken species is guilty of a felony
10 and shall be punished by a fine of \$10,000 or imprisonment
11 in the state prison for a term of 1 year, or both.
12 (Terminates June 30, 1993--sec. 5, Ch. 409, L. 1989.)

13 87-3-111. (Effective July 1, 1993) Unlawful to buy,
14 sell, possess, or transport fish or game -- exceptions --
15 penalties. (1) It is hereby made unlawful for any person to
16 purchase, sell, offer to sell, possess, ship, or transport
17 any game fish, game bird, migratory game bird, game animal,
18 or fur-bearing animal or part thereof protected by the laws
19 of this state, whether belonging to the same or different
20 species from that native to the state of Montana, except as
21 specifically permitted by the laws of this state.

22 (2) The provisions of this section shall not prohibit:

23 (a) the possession or transportation within the state
24 of any legally taken fish, game bird, migratory game bird,
25 game animal, or fur-bearing animal or part thereof; or

1 (b) the sale, purchase, or transportation of hides,
2 heads, or mounts of lawfully killed game birds, game fish,
3 fur-bearing animals, or game animals, except that the sale
4 or purchase of a hide, head, or mount of a grizzly bear is
5 prohibited, except as provided in 87-3-1107; or

6 (c) the possession, transportation, sale, or purchase
7 of naturally shed antlers.

8 (3) Except as provided in subsection (4), any person
9 violating any of the provisions of this section is guilty of
10 a misdemeanor and upon conviction thereof shall be punished
11 as provided by law.

12 (4) Any person engaging in the activities prohibited in
13 subsection (1) in furtherance of a scheme to traffic in the
14 body parts of unlawfully taken species is guilty of a felony
15 and shall be punished by a fine of \$10,000 or imprisonment
16 in the state prison for a term of 1 year, or both."

17 NEW SECTION. Section 9. Fish and game violation as
18 inchoate offense. Any violation of this title is an offense
19 for purposes of the crimes of attempt, solicitation, and
20 conspiracy set out in Title 45, chapter 4.

21 NEW SECTION. Section 10. Codification instruction.
22 [Sections 3 and 9] are intended to be codified as an
23 integral part of Title 87, chapter 1, part 1, and the
24 provisions of Title 87, chapter 1, part 1, apply to
25 [sections 3 and 9].

LC 0973/01

1 NEW SECTION. **Section 11.** Effective date. [This act] is
2 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0240, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill revises the law regarding fish and game misdemeanor penalties.

ASSUMPTIONS:

1. Violations will increase but will be handled by existing personnel.

FISCAL IMPACT:

No fiscal impact.

Rod Sundsted 2-2-91
ROD SUNDSTED, BUDGET DIRECTOR

DATE

Office of Budget and Program Planning

Fred R. Van Valkenburg 2-4-91
FRED R. VAN VALKENBURG, PRIMARY SPONSOR

DATE

Fiscal Note for SB0240, as introduced

SB 240

SB 240

SENATE FINAL STATUS

3/25	3RD READING AMENDMENTS CONCURRED	48	0
3/28	SIGNED BY PRESIDENT		
4/02	SIGNED BY SPEAKER		
4/02	TRANSMITTED TO GOVERNOR		
4/04	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 329		

EFFECTIVE DATE: 7/01/91

SB 240 INTRODUCED BY VAN VALKENBURG, ET AL.

GENERALLY REVISE FISH & GAME MISDEMEANOR STATUTES
BY REQUEST OF DEPARTMENT OF FISH, WILDLIFE, & PARKS

1/31	INTRODUCED		
1/31	REFERRED TO FISH & GAME		
1/31	FIRST READING		
1/31	FISCAL NOTE REQUESTED		
2/04	FISCAL NOTE RECEIVED		
2/04	FISCAL NOTE PRINTED		
2/12	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED		
2/16	2ND READING PASSED	48	0
2/18	3RD READING PASSED	49	0

	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO FISH & GAME		
3/13	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/16	2ND READING CONCURRED	90	0
3/18	3RD READING CONCURRED	95	2
	RETURNED TO SENATE		
3/23	SIGNED BY PRESIDENT		
3/23	SIGNED BY SPEAKER		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 277		

EFFECTIVE DATE: 7/01/91

SB 241 INTRODUCED BY BLAYLOCK

PROHIBIT DUAL COMPENSATION FOR CERTAIN ELECTED STATE
OFFICIALS

1/31	INTRODUCED		
2/01	REFERRED TO STATE ADMINISTRATION		
2/01	FIRST READING		
2/08	HEARING		
2/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED AS AMENDED	49	0
2/14	3RD READING PASSED	50	0

	TRANSMITTED TO HOUSE		
2/15	FIRST READING		
2/15	REFERRED TO STATE ADMINISTRATION		
3/08	HEARING		
3/12	TABLED IN COMMITTEE		

SB 242 INTRODUCED BY CRIPPEN, ET AL.

REVISE SCIENCE AND TECHNOLOGY ORGANIZATION, FUNDING,
AND PROGRAMS

BY REQUEST OF GOVERNOR

1/31	INTRODUCED		
1/31	FISCAL NOTE REQUESTED		
2/01	REFERRED TO TAXATION		
2/01	FIRST READING		
2/04	REREFERRED TO BUSINESS & INDUSTRY		
2/05	FISCAL NOTE RECEIVED		
2/07	FISCAL NOTE PRINTED		

Closing by Sponsor:

Senator Van Valkenburg urges passage of SB 239.

HEARING ON SB 240

Presentation and Opening Statement by Sponsor:

Senator Van Valkenburg, representing Senate Dist. No. 30, explained SB 240 is at the request of the Fish, Wildlife and Parks, to generally revise the law regarding fish and game misdemeanor penalties. The FWP wishes to devote their efforts of enforcement on individuals who purposely or knowingly violate the law.

Proponents' Testimony:

K. L. Cool, Director of Fish, Wildlife and Parks. See Exhibit No. 4.

Bob Winfield, representing Fish, Wildlife and Parks, gave his support for SB 240 for at this time the FWP's hands are tied when trying to prosecute offenders to the full extent of the law.

Susan Leonard, representing Montana Audubon Legislative Fund, supports SB 240. See Exhibit No. 5.

Stan Bradshaw, Montana Trout Unlimited, supports SB 240.

Tony Schoonen, representing the Skyline Sportsmen's Club of Butte, Mt. Supports SB 240.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Svrcek questioned Mr. Winfield if the investigation FWP is now involved in is a misdemeanor or a felony investigation. Mr. Winfield hopes that the FWP will be able to turn it into a felony investigation through Federal statutes, which is the only recourse they have.

Senator Svrcek questioned if it is worth for the FWP to pursue a misdemeanor investigation over a period of three years? Mr. Winfield stated that often times it is, as it can be made into a felony investigation.

Closing by Sponsor:

Senator Van Valkenburg commented on some of the cases he was involved with where the first individual who came to the

attention of the law enforcement personnel in the investigation only committed misdemeanor offenses but by working in an undercover fashion with those individuals, the FWP over a period of time was able to develop more serious violations with respect to other individuals. If the FWP were forced to file the case against the first individual within a one-year period of time, it could seriously jeopardize or terminate the ability to peruse that matter further. For this very reason, the extension of the statute of limitations is necessary.

HEARING ON SB 252

Presentation and Opening Statement by Sponsor:

Senator Svrcek, Senate District #26., explained that SB 252 will allow sportsmen and landowners to collectively determine Montana's long-term policy for acquiring ownership and access to wildlife habitat, development and management thereof.

SB 252 is strictly his own and no one has seen the contents other than the drafter prior to this time. This bill was born out of frustration of the sniping that has gone on over the whole issue over the last several years, born out of concerns that were raised regarding SB 13 specifically with regard to management, and born out of a commitment to the three constituencies that he represents, sportsmen, landowners and the wildlife resource. It is only through a partnership of the first two constituencies that we can properly serve the third.

Proponents' Testimony:

Ken Mesaros, rancher from Cascade, on the Board of Directors of the Montana Stockgrowers Assn., and speaking on their behalf this afternoon. See Exhibit No. 6.

Linda Lee, representing the Montana Audubon Legislative Fund, supports SB 252. See Exhibit No. 7.

Greg Barkus, sportsman and businessman from Kalispell, and a FWP Commissioner, stands in favor of SB 252. In the two years as FWP commissioner, we have wrestled with a variety of land acquisition programs. The purchases involved were thoroughly reviewed and studied in detail. One of the key components will provide the Department with much needed funds to properly manage, control and work the lands and properties that we do acquire. Another component of the bill will allow extensive study for the further acquisition purchase process. The Department has failed to acquire lands for the use of conservation easements, which is a vehicle that will allow the land to remain in private ownership.

SB 240
February 12, 1991

Testimony presented by K. L. Cool, Dept. of Fish, Wildlife & Parks
to Senate Fish and Game Committee

This legislation clarifies and strengthens the fish and wildlife criminal statutes that are most critically in need of revision.

This effort has been undertaken at the urging of our law enforcement officers, county attorneys, justice courts, district courts and the Montana Supreme Court. The proposed amendments will allow prosecutors, investigators and the courts to more efficiently and effectively carry out the intent of these statutes.

The first change requested extends the statute of limitations for prosecution of fish and game violations from one year to three years. Many times investigations into serious wildlife violations take longer than a year to discover or complete and prosecution is not possible within the current one-year limitation. This is compounded by the fact that many sportsmen and sportswomen are from out-of-state.

The second proposed revision adds language "knowingly or purposely violates" which is the state of mind provision necessary for committing criminal acts. This will ensure that honest mistakes will not result in criminal prosecution and that enforcement efforts will be directed at persons who knowingly or purposely violate fish and game laws.

The third requested change provides a means for the courts to forfeit license privileges for serious wildlife offenses, even though the defendant forfeited bail. There is a loophole in the present statute. If a defendant forfeits bail, the court does not have the authority to impose a forfeiture of privileges.

The fourth requested change prohibits people whose license privileges are forfeited from purchasing licenses during the period for which the privileges are forfeited. In addition, privileges will be suspended for failure to comply with court citations or sentences for a wildlife offense. This will be an effective tool for encouraging compliance where individuals ignore citations or where individuals fail to comply with sentences allowing time-payment of fines.

The fifth requested revision redefines waste of game to include neglecting to take reasonable care of game meat, thereby rendering it unfit for human consumption. In addition, it establishes responsibility for reasonable care of game meat to those in possession of it. This has been a problem once the game meat is removed from the field because under the present law only the hunter is responsible.

EXHIBIT 5
DATE 3-13-91
SB 240

SB 240
March 13, 1991

Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks

Director Cool has described in his testimony all of the statutory changes to the misdemeanor fish and game laws proposed in SB 240. My testimony will cover in greater legal and technical detail three of these proposed changes where further discussion may be helpful to the committee's consideration of the bill.

The statute of limitation for misdemeanor is one year as set in Section 45-1-205, MCA. This statute provides for a limited number of exceptions where special circumstances justify an extension of the statute of limitation. The department believes that fish and game misdemeanor violations frequently present special circumstances justifying a longer three year statute of limitation. These violations, by the nature of hunting and fishing, are not always readily discoverable, undercover operations frequently must span more than one hunting or fishing season, and many suspected violators are from out-of-state. All of these factors make it difficult, and sometimes impossible, to complete investigations and bring charges within a one year period of time. The department believes a three year statute of limitations would be workable and reasonable.

The fish and game misdemeanor statutes presently do not set out as one of their elements a mental state. Some county attorneys prosecute fish and game violations as strict liability crimes that do not require a specific mental state, while other county attorneys imply a mental state element of purposely or knowingly. If a required mental state of "purposely or knowingly" is adopted, all prosecutions will be uniform and, most important, accidental or negligent acts will not be prosecuted. While this will be a policy change in some counties, it is a change in direction the department desires to take.

Under present statutes, the crimes of attempt, solicitation, or conspiracy can be based on criminal offenses under Title 45. An argument can be made that there are no crimes of attempt, solicitation or conspiracy for fish and game violations because they are not offenses set out in Title 45. Therefore, a new section is proposed to insure that fish and game violations include the inchoate offenses of attempt, solicitation and conspiracy.

Hopefully, these comments will be helpful in your consideration of SB 240.

He urges the committee's support of SB 171. Without it, the Department will become mediocre and we will lose this resource. Montana is one of the last places where a man can hunt to feed his family if he is a proficient hunter.

EXECUTIVE ACTION ON SB 239

Amendments, Discussion, and Votes:

Senator Grosfield made the motion to approve amendments to SB 239. Amendments passed unanimously.

Recommendation and Vote:

Senator Jergeson made the motion to pass SB 239 as amended. Passed unanimously.

EXECUTIVE ACTION ON SB 240

Motion:

Senator Jergeson made the motion to pass SB 240.

Recommendation and Vote:

Senate Bill 240 passed unanimously.

EXECUTIVE ACTION ON SB 142

Discussion:

Senator Jergeson asked Director Cool if the outfitters bringing in hunters who were only after trophy bulls and not shooting cow elk was the reason for the over abundance of that sex. Director Cool stated that he didn't think so but felt the increased numbers of cow elk was due to the increase of the elk herds. He feels that SB 142 provides the FWP with an additional tool to harvest cow elk where there are extensive populations. He also felt there was a preference for antlered animals thus leaving more cow elk to escape the hunter's bullet.

Senator Franklin questioned Director Cool why this management problem could not have been handled within the Department.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 15, 1991

MR. PRESIDENT:

We, your committee on Fish and Game having had under consideration Senate Bill No. 240 (first reading copy -- white), respectfully report that Senate Bill No. 240 do pass.

Signed: _____

Bob Williams
Bob Williams, Chairman

ML 2-15-91
Cmd. Coord.

SB 2-15 1:30
Sec. of Senate

Mr. Bob Winfield, FWP, said this bill will benefit sportsmen. Sometimes FWP's enforcement officers are not able to prosecute under the fish and wildlife felony statutes.

Susan Lenard, Montana Audubon Legislative Fund, said this legislation is needed because it would increase the penalties for unlawful taking of wildlife.

Opponents' Testimony: none

Questions From Committee Members:

REP. GILBERT said on page 6, line 1, the bill refers to pallid sturgeon at \$300. Didn't the U.S. Fish and Wildlife Service declare the pallid sturgeon an endangered species? Mr. Lane said that is correct. REP. GILBERT said on page 6, line 1, and page 7, line 9, the word "pallid" should be stricken so that pallid sturgeon would fall under page 5, line 7, where it says "and endangered species, \$2,000". Mr. Cool said for the average fisherman, the pallid sturgeon is very difficult to distinguish from the white sturgeon. Only four pallid sturgeon were found last year. The department would prefer it wasn't listed as an endangered species. The federal statutes will apply regardless of how it's listed. If a pallid sturgeon is accidentally taken, the department would like the flexibility of whether to prosecute or not. REP. GILBERT said it is an endangered species, so it should be listed as an endangered species. REP. KELLER asked whether a person who takes the parts of a damaged game animal before it deteriorates and has it in his possession can be prosecuted under this legislation. Mr. Lane said no, a person would have to illegally take the animal and then try to sell it. REP. FORRESTER asked why the restitution value of the bull elk is so low. These animals can be bought back at an auction at a lesser price. Mr. Cool said the average animal restitution values need to be used so the courts will have guidelines. If values are set too high, it is difficult to prosecute because the penalties are not acceptable to society.

Closing by Sponsor:

SEN. VAN VALKENBURG said effective prosecution laws are needed and urged support of SB 239.

HEARING ON SENATE BILL 240

Presentation and Opening Statement by Sponsor:

SEN. VAN VALKENBURG said this bill is to revise the laws regarding fish and game misdemeanor penalties. It clarifies and strengthens the fish and wildlife criminal statutes. The amendments will allow the courts to effectively carry out the

intent of these statutes. The statute of limitations for prosecution of fish and game violations is extended from one year to three years.

Proponents' Testimony:

K.L. Cool, FWP, supports this bill. EXHIBIT 4

Bob Lane, FWP, supports this bill. EXHIBIT 5

Susan Lenard, Montana Audubon Legislative Fund, supports this bill.

Opponents' Testimony: none

Closing by Sponsor:

SEN. VAN VALKENBURG urged support of HB 240.

HEARING ON SENATE BILL 401

Presentation and Opening Statement by Sponsor:

SEN. BOB PIPINICH, House District 33, Missoula, said this bill would require FWP to seize game being transported by vehicle in an area that has been legally closed to the use of vehicles.

Proponents' Testimony:

Manx Skillicorn, Champion International, said most of Champion's land is open for hunting and roads are not gated. Gates are used for a reason. If a gate is damaged, it costs \$500 to \$2,000 to repair or replace it. The penalties are not high enough to deter people from vandalizing the gates. It would help if the seizure of game was mandatory.

David Ball, Missoula Deputy Sheriff, said more roads are being closed. Fines for trespassing are not high enough. It is cheaper to violate the law than to abide by it.

K.L. Cool, FWP, supports this bill. EXHIBIT 6

Susan Lenard, Montana Audubon Legislative Fund, supports this bill.

Opponents' Testimony: none

Questions From Committee Members:

REP. DAILY asked if a gate was torn down, would a judge make the person pay for it? Deputy Ball said yes, if it could be proven. The person with the game animal may not be the person who damaged the gate. REP. DAILY asked SEN. PIPINICH if "federal, state,

EXECUTIVE ACTION ON SENATE BILL 239

Motion: REP. PHILLIPS MOVED SB 239 BE CONCURRED IN.

Discussion:

REP. GILBERT said pallid sturgeon should be put in the schedule of endangered species. REP. MEASURE agreed.

Motion/Vote: REP. GILBERT moved to adopt an amendment to SB 239. EXHIBIT 7 Motion carried unanimously.

Motion/Vote: REP. GILBERT MOVED SB 239 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 240

Motion: REP. PHILLIPS MOVED SB 240 BE CONCURRED IN.

Discussion:

REP. GILBERT asked if a person could be fined for storing or throwing away bad meat that was kept in a freezer too long. Mr. Winfield said that is not the intent. For example, this bill addresses a person who kills a deer and lets it rot on their lawn or hanging in their garage. Under present statutes that person could not be fined for wasting game. REP. GILBERT asked whether a hunter who attempts to cool his game properly, but due to warm weather it spoils, can be prosecuted? Mr. Winfield said the hunter would not be prosecuted because it was not done purposely. REP. MEASURE said the provision "upon conviction or forfeiture of bond or bail" appears extensively in the bill. There is a constitutional problem of whether or not they are convicting somebody before they have a right to appeal. Why is that language being used? Is the department willing to change it? Mr. Lane said the department is trying to deal with a loophole. Persons can simply take the ticket to appear, post bond, and then forfeit the bond, knowing they won't be subject to the forfeiture provision. The forfeiture provision is one of the strongest enforcement measures the department has, because people value their hunting and fishing privileges. People will forfeit the bond, but not their hunting and fishing privileges. If there are revisions needed in the wording, the department would certainly consider it, but they want to make sure the loophole is closed. CHAIRMAN ELLIOTT said the title of this bill is amendable to raising the trespass penalties. REP. MEASURE said raising trespass penalties is a terrible idea. Trespass is the very least of any of the crimes against property and should remain so. The present trespass law is strong enough. There is a criminal mischief statute that covers the vandalism of gates. It would cause too many problems to amend this bill in regard to trespassing. REP. STRIZICH agreed that trespass needs to be a

separate issue and not dealt with in this bill. Trespass is a very sticky and wicked subject. REP. ELLISON agreed that trespass should not be dealt with in this bill.

Vote: SB 240 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 252

Motion: REP. GILBERT MOVED SB 252 BE CONCURRED IN.

Discussion:

REP. GILBERT said this bill extends the wildlife habitat acquisition program until 1996. There are still access problems, but it does allow money for maintenance. REP. DAILY said when FWP purchases a ranch, they allow someone to lease it. There should be enough revenue to pay for maintenance. REP. ELLISON said the ranches in his area are being used strictly for elk habitat and are not being maintained. REP. HANSON said FWP needs maintenance operation money. REP. FORRESTER said there are too many studies and too much money spent on these studies. This study will come from the acquisition fund in HB 526. He would love to be a consultant in this state. REP. SCOTT asked about the amendments. CHAIRMAN ELLIOTT said they have not been moved.

Mr. Sternberg explained the amendments. EXHIBIT 8

REP. MCCARTHY asked if this would be a permanent ongoing study. Mr. Sternberg said no. The completion date of the study is 1992, but the program would be permanent. REP. DAILY opposed the amendments. The acquisition program is not working as well as it should and sportsmen need their input into this study. REP. PHILLIPS said he favors the bill but not the amendments.

Motion: REP. SCOTT moved to consider the amendments separately. Motion failed 6 - 10 with Reps. Measure, Gilbert, Scott, Daily, Barnhart, and Strizich voting yes.

Motion/Vote: REP. STRIZICH moved to adopt amendments to Senate Bill 252. Motion failed 5 - 12. EXHIBIT 9

Vote: SB 252 BE CONCURRED IN. Motion passed 13 - 4. EXHIBIT 10

EXECUTIVE ACTION ON SENATE BILL 13

Motion: REP. PHILLIPS MOVED SENATE BILL 13 BE TABLED.

Discussion:

Mr. Sternberg said there is no conflict between SB 252 and SB 13.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Fish and Game COMMITTEE BILL NO. SB 240
 DATE 3-13-91 SPONSOR(S) Van Valkenburg

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Susan Lenard	MT Audubon			X
Stan Bradshaw	MTU			✓
Pat Bradley	See			✓
Scott Snelson	MT Wildlife Fed.			✓
K.L. Cool	FWP			✓
Bob Winfield	FWP			✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Montana Audubon Legislative Fund

Testimony on SB 240
Senate Fish & Game Committee
February 12, 1991

Mr. Chairman and Members of the Committee,

My name is Susan Lenard and I'm here today representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of nine Chapters of the National Audubon Society and represents 2,500 members throughout the state.

Laws aimed at discouraging the illegal taking of Montana's wildlife are particularly important today because of the increase in commercial poaching operations in Montana. Higher fines make poaching less lucrative.

We support SB 240 because it clarifies several features of Montana's misdemeanor wildlife laws.

We urge you to vote "DO PASS" on this important measure.

EXHIBIT 7
DATE 3-12-91
SB 240

SB 240
March 13, 1991

Testimony presented by K. L. Cool, Dept. of Fish, Wildlife & Parks
to House Fish and Game Committee

This legislation clarifies and strengthens the fish and wildlife criminal statutes that are most critically in need of revision.

This effort has been undertaken at the urging of our law enforcement officers, county attorneys, justice courts, district courts and the Montana Supreme Court. The proposed amendments will allow prosecutors, investigators and the courts to more efficiently and effectively carry out the intent of these statutes.

The first change requested extends the statute of limitations for prosecution of fish and game violations from one year to three years. Many times investigations into serious wildlife violations take longer than a year to discover or complete and prosecution is not possible within the current one-year limitation. This is compounded by the fact that many sportsmen and sportswomen are from out-of-state.

The second proposed revision adds the language "knowingly or purposely violates" which is the state of mind provision necessary for committing criminal acts. This will ensure that honest mistakes will not result in criminal prosecution and that enforcement efforts will be directed at persons who knowingly or purposely violate fish and game laws.

The third requested change provides a way for the courts to suspend license privileges for serious wildlife offenses, even though the defendant forfeited bail. There is a loophole in the present statute. If a defendant forfeits bail, the court does not have the authority to impose a forfeiture of privileges.

The fourth requested change prohibits people whose license privileges are forfeited from purchasing licenses during the period for which the privileges are forfeited. In addition, privileges will be suspended for failure to comply with court citations or sentences for a wildlife offense. This will be an effective tool for encouraging compliance where individuals ignore citations or where individuals fail to comply with sentences allowing time-payment of fines.

The fifth requested revision redefines waste of game to include neglecting to take reasonable care of game meat, thereby rendering it unfit for human consumption. In addition, it establishes responsibility for reasonable care of game meat to those in possession of it. This has been a problem once the game meat is removed from the field because under the present law only the hunter is responsible.

The sixth requested revision makes it unlawful to attempt to take an overlimit of game or attempt to hunt, fish or trap during a closed season. This provides for consistency with present language in the license requirement (Sec. 87-2-101) and means of taking (Sec. 87-3-101) statutes.

The seventh requested amendment will clarify that violators of fish and game laws may be prosecuted for the crimes of attempt, solicitation and conspiracy in the same manner as other criminal violations.

These amendments clarify and strengthen present laws, resulting in more efficient application. We request your favorable consideration.

4:00
3.14.91
JDB

HOUSE STANDING COMMITTEE REPORT

March 14, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that
Senate Bill 240 (third reading copy -- blue) be concurred in.

Signed: _____
Jim Elliott, Chairman

Carried by: Rep.